

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORY HOLLAND, SR.,

Plaintiff,

CA: 21-10629

HON: STEPHANIE DAWKINS DAVIS
MAG. ELIZABETH A. STAFFORD

-vs-

MADISON HEIGHTS POLICE
DEPARTMENT, OFFICER HEINRICH
AND OFFICER RANDOLPH,

Defendants.

/

Cory Holland, Sr.
In Pro se
8467 Republic Avenue
Warren, MI 48089

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC
BY: Holly S. Battersby (P72023)
Michael T. Berger (P77143)
Attorneys for Defendants
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mberger@rsjalaw.com

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ANSWER TO PLAINTIFF'S COMPLAINT

Defendants, **CITY OF MADISON HEIGHTS POLICE DEPARTMENT, OFFICER HEINRICH AND OFFICER RANDOLPH**, by and through their attorneys, **ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.**, for their Answer to Plaintiff's Complaint, state as follows:

Defendants deny each and every allegation contained in Plaintiff's Complaint for the reasons that they mischaracterize the facts and circumstances surrounding this incident, misrepresent the actions of Defendants, mischaracterize Plaintiff's conduct and representations, misrepresent the applicable law, mischaracterize the cause of Plaintiff's damages, misrepresent Plaintiff's entitlement to damages, misstate the basis for this Court's jurisdiction and because they are otherwise true.

Defendants respectfully request that this Honorable Court dismiss this Complaint, in its entirety, with prejudice and with an award of the costs and attorney fees so wrongfully sustained in defending this action.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

s/Holly S. Battersby

Attorney for Defendants
27555 Executive Drive, Ste. 250
Farmington Hills, MI 48331
(248) 489-4100
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(P72023)

DATED: May 26, 2021

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AFFIRMATIVE DEFENSES

Defendants, **CITY OF MADISON HEIGHTS POLICE DEPARTMENT, OFFICER HEINRICH AND OFFICER RANDOLPH**, by and through their attorneys, **ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.**, state as follows for their Affirmative Defenses;

1. Defendant Madison Heights Police Department is not a legal entity capable of being sued.
2. Plaintiff's claims are barred by the applicable statute(s) of limitations.
3. Plaintiff has failed to state a claim upon which relief could be granted.
4. Plaintiff's claims are barred by the application of qualified immunity or other immunity provided by federal law.
5. Plaintiff's claims under state law, if any, are barred by the application of governmental immunity or other immunity provided by state law.
6. Plaintiff has not pled his fraud claim with sufficient particularity.
7. This Court lacks jurisdiction over Plaintiff's purely state law claims.
8. Plaintiff's damages, if any, are the result of Plaintiff's comparative negligence and/or illegal or wrongful conduct.
9. Plaintiff's damages, if any, are the result of actions by third parties, other than these Defendants.

10. Plaintiff's claims are barred by governmental immunity as Defendants' actions were not "the" proximate cause of any injury to Plaintiff.

11. Plaintiff's claims are barred by governmental immunity as Defendants' actions did not rise to the level of gross negligence as defined in the GTLA.

12. Plaintiff's claims are barred by the application of res judicata and/or collateral estoppel.

13. No Defendant committed fraud against Plaintiff.

14. Plaintiff cannot establish any intentional tort against these Defendants as they were acting in the scope and course of their authority; acted in good faith and were engaged in discretionary acts at all relevant times.

15. Plaintiff has failed to state a claim against the Madison Heights Police Department as there is no respondeat superior liability under either state or federal law.

16. Plaintiff has failed to plead facts demonstrating the Madison Heights Police Department had a pattern, practice, policy or procedure which was the moving force behind a violation of Plaintiff's constitutional rights.

17. Plaintiff failed to mitigate his damages.

18. Defendant reserves the right to plead additional Affirmative Defenses as they become known through discovery.

Respectfully submitted,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

s/Holly S. Battersby
Attorney for Defendants
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RELIANCE UPON JURY DEMAND

Defendants, **CITY OF MADISON HEIGHTS POLICE DEPARTMENT, OFFICER HEINRICH AND OFFICER RANDOLPH**, by and through their attorneys, **ROSATI, SCHULTZ, JOPPICH & AMTSBUECHLER, P.C.**, hereby rely upon Plaintiff's demand for a trial by jury in the above-entitled cause of action.

Respectfully submitted,

**ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC**

s/Holly S. Battersby
Attorney for Defendants
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DATED: May 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: None; and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

On: Cory Holland, Sr.
8467 Republic Avenue
Warren, MI 48089

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

s/Holly S. Battersby

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